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7 BEFORE THE INSURANCE COMMISSIONER  
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application  
10 regarding the Conversion and  
11 Acquisition of Control of Premera Blue  
12 Cross and its Affiliates.

No. G 02-45

PREMERA'S RESPONSE TO  
"INTERVENERS' CONCERNS  
AND OBJECTIONS"

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14 On October 15, 2003, Premera was served with a document entitled "Interveners'  
15 Concerns and Objections Concerning Pre-Hearing Procedure." It is not clear whether the  
16 Interveners seek a hearing on the issues they raise in this document. If so, Premera  
17 anticipates responding fully in accordance with the schedule established for such a  
18 hearing. In the meantime, and in order to set the record straight, Premera offers the  
19 following brief response to the factual allegations in the Interveners' document:

20 1. On the afternoon of September 30, 2003, shortly after receiving the  
21 Fourteenth Order: Ruling on Interveners' Request to Revise the Case Schedule, Premera's  
22 counsel phoned Carol Sureau to request an emergency hearing. The Fourteenth Order  
23 granted relief to the Interveners that they had not requested in their motion to revise the  
24 schedule in the Thirteenth Order, and such relief was to take effect three days later.  
25 Specifically, the Fourteenth Order ordered the OIC Staff to turn over the draft consultant

PREMERA'S RESPONSE TO "INTERVENERS'  
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1 reports and executive summaries to the Intervenors on October 3, 2003. Premera was  
2 concerned that such materials should be subject to the Commissioner's Eighth Order:  
3 Protective Order, as they contain a great deal of confidential and proprietary information.

4         2.       The Commissioner's First Order: Case Management Order prohibits *ex*  
5 *parte* communications between the Commissioner and his advisors, on the one hand, and  
6 any party, on the other, "except for communications necessary to procedural aspects of  
7 maintaining an orderly process." Ascertaining whether the Commissioner can find time to  
8 hold an emergency hearing qualifies as a procedural inquiry. Premera did not suggest a  
9 date or time for such a hearing; it received the Commissioner's notice of hearing at the  
10 same time as the OIC Staff and the Intervenors.

11         3.       Premera submitted a written motion and supporting materials<sup>1</sup> as soon as it  
12 could, which was shortly after midnight on October 1. Premera's counsel sought, without  
13 success, to make contact with Rick Spoonemore (counsel for the Premera Watch Coalition  
14 Intervenor Group) on the evening of September 30, in hopes of developing a mutually  
15 agreeable solution to the problem of protecting the confidential information contained in  
16 the draft consultant reports and executive summaries. Premera's counsel did speak with  
17 Mr. Spoonemore and with the OIC Staff attorney before the hearing, and they reached  
18 agreement on a proposal to submit to the Commissioner. The Commissioner did not  
19 wholly adopt that proposal; no party, however, moved for reconsideration.

20         4.       Contrary to Intervenors' assertion, there was no "emergency hearing" on  
21 October 8. In his Sixteenth Order: Notice Regarding Public Hearing Procedures and  
22 Setting of Conference, the Commissioner scheduled a conference for October 8, 2003, to  
23 take comments from the parties on the procedures described in that order. Any party was

24 <sup>1</sup> There were two exhibits to Premera's motion: a suggested form for Intervenors' Second  
25 Request for Production of Documents, and a proposed order. Intervenors' reference to  
"two proposed motions and one proposed order" is mystifying.

1 welcome to submit comments at or, presumably, before the scheduled conference.  
2 Premera offered its comments in writing on October 7. Premera's comments spurred  
3 comments from the Intervenors, and theirs prompted follow-up comments by Premera and  
4 the OIC Staff. All such comments were submitted with notice to all parties.

5         5. To Premera's knowledge, Intervenors did not move for reconsideration of  
6 the Fourteenth Order. There was, therefore, no occasion for them to file a reply brief in  
7 support of such a motion. Intervenors did, however, request modification of the schedule  
8 set forth in the Thirteenth Order. They did so by filing a motion for reconsideration with  
9 the Commissioner. Accordingly, their suggestion "that future attempts to modify the  
10 discovery schedule . . . be referred to the Special Master" (Intervenors' Concerns, at 4)  
11 appears to be self-directed. For its part, Premera intends to direct requests for relief to the  
12 Special Master on all matters within his sphere of authority. Insofar as a party might seek  
13 to modify one of the Commissioner's orders, however, it appears that the Commissioner  
14 alone can grant such relief.

15         DATED this 20<sup>th</sup> day of October, 2003.

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17                     PRESTON GATES & ELLIS LLP

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